

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR JACKSON COUNTY

CYNTHIA ANN SHEPPARD,

Plaintiff,

vs.

PENSION TRUST FUND FOR OPERATING ENGINEERS,

Defendant.

CASE NO. 20CV18112

SUMMONS

RECEIVED
JUN 19 2020
PENSION

To: PENSION TRUST FUND FOR OPERATING ENGINEERS
ATTN: FUND MANAGER
ASSOCIATED THIRD PARTY ADMINISTRATORS
1600 Harbor Bay Parkway, Suite 200
Alameda, CA 94502-3035

You are hereby required to appear and defend the Complaint filed against you in the above entitled cause within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, Plaintiff(s) will apply to the court for the relief demanded in the Complaint.

NOTICE TO THE DEFENDANT(S): READ THESE PAPERS CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer". The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the Plaintiff(s) attorney or, if the Plaintiff(s) do/does not have an attorney, proof of service upon the Plaintiff(s).

If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763, or toll free in Oregon at (800) 452-7636.

/s/ Richard L. Billin
Signature of attorney/Author of the petition

812 Bennett Ave
Address

Medford Oregon 97504
City State Zip

Same
Trial attorney if other than above (print or typed)
Bar No. _____

Richard L. Billin, OSB# 90454
Attorney's/Author's name (typed or printed)/Bar No.
(541) 776-9900
Phone

STATE OF OREGON, County of Jackson) ss.

I, the undersigned attorney of record for the Plaintiff(s), certify that the foregoing is an exact and complete copy of the original summons in the above entitled cause.

/s/ Richard L. Billin
Attorney of record for Plaintiff(s)

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the Complaint mentioned herein, upon the individual(s) or other legal entity[ies] to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.

[Signature]
Attorney of record for Plaintiff(s)

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF JACKSON

CYNTHIA ANN SHEPPARD,
Plaintiff,
vs.
PENSION TRUST FUND FOR
OPERATING ENGINEERS,
Defendant.

Case No.
PETITION FOR DECLARATORY RELIEF
Filing Fee: \$281.00 (ORS 21.135(1), (2) (a))
(Not Subject to Mandatory Arbitration)

1.

Plaintiff is a resident of Jackson County, Oregon. Plaintiff is the surviving spouse of Robert D. Sheppard, Jr.

2.

Defendant is a pension trust fund for participating members of certain select unions. Defendant operates in California.

3.

Robert D. Sheppard, Jr., ("Mr. Sheppard") was a retired lineman and member of the Operating Engineers Local 3 union in California. Mr. Sheppard retired on July 1, 1994 and proceeded to received retirement benefits in the monthly amount of \$2,931.00 from the OE3 Trust Fund ("Trust Fund").

4.

Barbara Sheppard is a former spouse of Mr. Sheppard. Barbara Sheppard was married to Mr. Sheppard at the time Mr. Sheppard retired. The marriage was dissolved on July 12,

COMPLAINT FOR DECLARATORY RELIEF

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Attorney at Law
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Exhibit A, Page 2 of 5

1 2005. As part of the divorce, Barbara Sheppard relinquished and waived any all claims to the
2 retirement benefits provided to Mr. Sheppard by the OE3 Pension Trust Fund.

3 5.

4 On August 31, 2008, Plaintiff married Mr. Sheppard. Immediately following the
5 marriage, Mr. Sheppard contacted Defendant and sought to substitute Plaintiff as beneficiary
6 of his pension. Mr. Sheppard submitted all required applications and supporting documents.
7 At no point did Mr. Sheppard receive any notification or correspondence from Defendant
8 indicating that Plaintiff had properly substituted as his proper beneficiary.

9 6.

10 Barbara Sheppard passed away June 9, 2017. Mr. Sheppard passed away on
11 November 4, 2017. At the time of his death, Robert D. Sheppard Jr. was receiving monthly
12 pension benefits in the amount of \$2,931.00. As a qualifying spouse, Plaintiff is entitled to
13 50% of those benefits until her death.

14 7.

15 On February 6, 2018, Plaintiff made a formal application for death benefits to
16 Defendant. On April 24, 2018, Defendant denied Plaintiff's application, claiming that
17 Plaintiff was not entitled to survivor benefits because Barbara Sheppard had not waived her
18 right to such benefits despite the fact that she waived such rights in the divorce decree.

19 8.

20 Plaintiff subsequently appealed the denial. Her appeal was also denied. Accordingly,
21 Plaintiff has exhausted all administrative remedies.

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24
25 COMPLAINT FOR DECLARATORY RELIEF

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Exhibit A, Page 3 of 5

9.

Defendant's denial of survival benefits is wrongful and improper for the following reasons:

1. Robert D. Sheppard, Jr., complied with all terms and conditions of the pension trust rules when he substituted Plaintiff as beneficiary;
2. Barbara Sheppard explicitly waived her right to such benefits in her divorce decree, a copy of which was provided to Defendant in 2008;
3. Defendant is estopped from denying said benefits in that Defendant never informed or notified Robert D. Sheppard Jr. that Plaintiff was not properly substituted as beneficiary according to Defendant's interpretation of the pension trust fund rules;
4. Defendant is estopped from denying said benefits because Defendant never suggested, informed or provided an "acceptable" waiver form to Robert D. Sheppard Jr. for submission by Barbara Sheppard;
5. Defendant breached its covenant of good faith and fair dealing by not providing all necessary information to Robert D. Sheppard regarding his right under the pension contract to substitute Plaintiff as a spousal beneficiary;
6. Defendant is estopped from denying said spousal benefits because any waiver by Barbara Sheppard is of no force or effect due to her passing in 2017.

10.

Accordingly, Plaintiff is entitled to a Declaration from this Court as authorized by ORS 28.010 et seq., that she is entitled to monthly spousal survivor benefits in the amount of \$1,465.50 retroactive to January of 2019, per the terms and conditions of the Summary Plan Description for the Pension Trust Fund for Operating Engineers.

COMPLAINT FOR DECLARATORY RELIEF

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3 11.
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5 The dispute referenced herein is a justiciable controversy and is ripe for adjudication.
6 All parties necessary for complete adjudication of the dispute have been joined in this action.
7

8 WHEREFORE, Plaintiff prays for a judgment from this Court that she is entitled to
9 Survivor Spousal Benefits under the terms and conditions of the Pension Trust Fund for
10 Operating Engineers, that said benefits are in the monthly amount of \$1,465.50; that said
11 benefits should be paid retroactively from January of 2019; for Plaintiff's costs and
12 disbursements and for such other relief the Court deems just and equitable.

13 DATED this 14th day of May, 2020.
14

15 By: 
16 RICHARD BILLIN, OSB No. 904546
17 Attorney for Plaintiff
18 812 Bennett Ave
19 Medford, Or 97504
20 Ph (541) 776 – 9900
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23
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COMPLAINT FOR DECLARATORY RELIEF

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